

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
ROBERT PAUL ALYEA,)
)
Defendant.)

No. 79-CR-100-C

FILED

NOV 20 1979

O R D E R

Jack C. Silver, Clerk
U. S. DISTRICT COURT

Defendant was charged by a three-count indictment and after a non-jury trial was convicted as to all three counts on August 17, 1979. Now before the Court for its consideration is the defendant's Motion to Arrest Judgment as to Counts One and Two, which are brought pursuant to Title 18 U.S.C. §1709. The defendant alleges that those Counts fail to charge an offense because they do not contain allegations of one of the essential elements of the crime.

The Government contends that the defendant's Motion was not timely under Rule 34 of the Federal Rules of Criminal Procedure. Rule 34 provides in pertinent part as follows:

The court on motion of a defendant shall arrest judgment if the indictment . . . does not charge an offense The motion in arrest of judgment shall be made within 7 days after verdict or finding of guilty, or after plea of guilty or nolo contendere, or within such further time as the court may fix during the 7-day period.

The time limits set down in Rule 34 have been held to be jurisdictional. See Rowlette v. United States, 392 F.2d 437 (10th Cir. 1968); Marion v. United States, 171 F.2d 185 (9th Cir. 1948). However, several courts have permitted a challenge to the sufficiency of the indictment which is first made on appeal. See United States v. Beard, 414 F.2d 1014 (3rd Cir. 1969); Robinson v. United States, 263 F.2d 911 (10th Cir. 1959); United States v. Manuszak, 234 F.2d

421 (3rd Cir. 1956). And in Wright, Federal Practice and Procedure, Vol. 2, §573, the following comment is found:

The time limitations of the rule are said to be jurisdictional, and it is held that a motion in arrest of judgment made after the time has run comes too late. Nevertheless the courts have found a surprising number of ways to avoid this result Other courts have allowed untimely motions by virtue of the provision of Rule 12b)(2) that "lack of jurisdiction or the failure of the indictment or information to charge an offense shall be noticed by the court at any time during the pendency of the proceeding."

Rule 12(b) of the Federal Rules of Criminal Procedure provides:

(b) Pretrial motions. Any defense, objection, or request which is capable of determination without the trial of the general issue may be raised before trial by motion. Motions may be written or oral at the discretion of the judge. The following must be raised prior to trial:

(2) Defenses and objections based on defects in the indictment or information (other than that it fails to show jurisdiction in the court or to charge an offense which objections shall be noticed by the court at any time during the pendency of the proceedings);

In Wright, Federal Practice and Procedure, Vol. 1, §193, it is said

[t]here is an inconsistency in this respect between Rule 34, on arrest of judgment, and Rule 12(b)(2). The same objections here discussed, lack of jurisdiction and failure of the indictment or information to charge an offense, are the stated grounds on which Rule 34 permits a motion for arrest of judgment. Yet the rule permits such a motion to be made only within seven days after verdict, or such extended time as the court may fix within the seven day period, while Rule 12(b)(2) makes it mandatory that the court notice precisely the same defect at any time during the pendency of the proceeding. The Supreme Court has observed this inconsistency but did not have to resolve it. The lower courts have considered that Rule 12, rather than the restricted time limit of Rule 34, is controlling.

In United States v. Kehoe, 516 F.2d 78, 89 (5th Cir. 1975), Judge Bell, in his dissenting opinion said:

....[T]he law in this circuit is that an indictment may be challenged for the first time on appeal, and after trial and conviction.

Walker v. United States, 5 Cir., 1965, 342 F.2d 22, 26. It is also the law in other circuits. United States v. Beard, 3 Cir., 1969, 414 F.2d 1014, 1017; United States v. Bailey, 7 Cir., 1960, 277 F.2d 560, 562.

It is true that the delay was an admitted trial tactic but experienced counsel were taking advantage of what is expressly permitted by Rule 12(b)(2). They wished to see the government's case before they moved to strike the indictment. The trial court could have ruled, but did not, that the motion came too late....

In United States v. Trevino, 491 F.2d 74, 75 (5th Cir. 1974) the Court said:

The indictment was challenged prior to trial as required by Rule 12(b)(2), F.R.Crim.P. Moreover, under the terms of the rule, an indictment may be challenged at any time if no offense is charged in the indictment. Walker v. United States, 5 Cir., 1965, 342 F.2d 22, 26; United States v. Beard, 3 Cir., 1969, 414 F.2d 1014, 1017.

In Marteney v. United States, 216 F.2d 760 (10th Cir. 1954), the defendants had been sentenced and committed on pleas of guilty. Thereafter the defendants moved to arrest the judgments on the grounds that the counts involved in the indictment failed to charge a federal offense. The trial court treated the pleadings as motions to vacate under §2255, Title 28 U.S.C. The Tenth Circuit found that the Motions in Arrest of Judgment having been untimely filed under Rule 34, F.R.Crim.P., the trial court correctly treated them as §2255 motions, stating: "Having in mind that it is the content of the pleadings and not the label which determines their nature and effect, we can see no impropriety in the court's treatment of the pleadings as motions to vacate under Section 2255." (Emphasis added).

The Court therefore finds that defendant's Motion for Arrest of Judgment, which was filed on September 14, 1979, has not been timely made. However, the Court further finds that said Motion pursuant to Rule 34 may properly be treated as a motion pursuant to Rule 12(b)(2).

Rule 7(c) of the Federal Rules of Criminal Procedure

requires that the indictment set forth a "plain, concise, and definite written statement of the essential facts constituting the offense charged."

The Supreme Court recently held:

....[a]n indictment is sufficient if it, first, contains the elements of the offense charged and fairly informs a defendant of the charge against which he must defend, and, second, enables him to plead an acquittal or conviction in bar of future prosecutions for the same offense." Hamling v. United States, 418 U.S. 87, 117, 94 S.Ct. 2887, 41 L.Ed.2d 590 (1974).

Title 18 U.S.C. §1709 states two separate offenses.

Hall v. United States, 168 U.S. 622, 18 S.Ct. 237, 42 L.Ed. 607 (1898); U.S. v. Trevino, supra. One part of the statute deals with embezzlement and the other with theft.

The first part of §1709 states:

Whoever, being a Postal Service officer or employee, embezzles any letter, postal card, package, bag, or mail, or any article or thing contained therein entrusted to him or which comes into his possession intended to be conveyed by mail, or carried or delivered by any carrier, messenger, agent, or other person employed in any department of the Postal Service, or forwarded through or delivered from any post office or station thereof established by authority of the Postmaster General or of the Postal Service;.... (Emphasis supplied)

The second part of §1709 states:

...[o]r steals, abstracts, or removes from any such letter, package, bag, or mail, any article or thing contained therein,

Counts One and Two of the Indictment here under consideration basically allege:

On or about [date], in the Northern District of Oklahoma, Robert Paul Alyea, being a Postal Service employee, did embezzle a first-class letter and its contents, eight one dollar bills, to wit: a letter addressed to [name and address], bearing a return address of [name and address], which letter had come into his custody while performing official duties as a letter carrier, U. S. Postal Service, in violation of Title 18, U.S.C. Section 1709. (Emphasis supplied)

The Indictment does not encompass the words "intended to be conveyed by mail".

In United States v. Pomponio, 517 F.2d 460 (4th Cir.

1975), cert. denied, 423 U.S. 1015, 96 S.Ct. 448, 46 L.Ed.2d 386 (1975), the court held insufficient an indictment which did not accurately and clearly allege all the elements comprising the offense charged in that case. In so doing, the Fourth Circuit relied upon a similar holding in United States v. Beard, supra. The Third Circuit decision was based on language contained in Russell v. United States, 369 U.S. 749, 82 S.Ct. 1038, 8 L.Ed.2d 240 (1962). In holding the indictment defective, the Supreme Court noted that the rules governing the contents of indictments, variances and amendments are designed to protect certain important rights: the Sixth Amendment right to fair notice of the criminal charge a defendant is required to meet, the Fifth Amendment right not to be placed twice in jeopardy for the same offense, and the right guaranteed by the Fifth Amendment not to be held to answer for certain crimes except upon a presentment or indictment returned by a grand jury.

The Court here confines itself to the legal sufficiency of the indictment and not the facts of the case as heretofore evolved in the non-jury trial.

Omissions which are fatal are those of essential elements of "substance", rather than "of form only." United States v. Camp, 541 F.2d 737 (8th Cir. 1976); United States v. Carll, 105 U.S. 611, 612 (1882).


In determining whether an essential element has been omitted a court will not insist that any particular word or phrase appear, and the element may be alleged "in any form" which substantially states the element. Hagner v. United States, 285 U.S. 427 (1932).

When an indictment does not accurately and clearly allege all the ingredients of which the offense is composed, it is insufficient. United States v. Pomponio, supra; United States v. London, 550 F.2d 206, 211 (5th Cir. 1977); United States v. Purvis, 580 F.2d 853 (5th Cir. 1978).

The Court finds that the indictment as to Counts One and Two does not charge an offense.

IT IS, THEREFORE, ORDERED that the defendant's Motion to Arrest Judgment be and the same is hereby converted to a Motion to Dismiss pursuant to Rule 12(b)(2), F.R.Crim.P. and that the same be and it is hereby sustained and Counts One and Two are hereby dismissed for failure to state an offense.

It is so Ordered this 20th day of November, 1979.



H. DALE COOK
Chief Judge, U. S. District Court

DEFENDANT

JIMMY DEWAYNE BLACK

DOCKET NO.

79-CR-114-C

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO-245 [5/75]

COUNSEL

In the presence of the attorney for the government the defendant appeared in person on this date

MONTH DAY YEAR
11 16 79

WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

WITH COUNSEL

Charles W. Hack, Court Appointed

(Name of counsel)

PLEA

GUILTY, and the court being satisfied that there is a factual basis for the plea,

NOLO CONTENDERE,

NOT GUILTY

FINDING & JUDGMENT

There being a finding/verdict of

NOT GUILTY. Defendant is discharged

GUILTY.

Defendant has been convicted as charged of the offense(s) of having violated Title 21, U.S.C., Sections 846, 841(a)(1), as charged in the Indictment.

NOV 16 1979

Jack C. Silver, Clerk
U.S. DISTRICT COURT

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

Three (3) Years

IT IS FURTHER ORDERED that the defendant is sentenced to a special parole term of Three (3) years, to commence at the expiration of the sentence imposed herein.

SPECIAL CONDITIONS OF PROBATION

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

CERTIFIED AS A TRUE COPY ON

THIS DATE

SIGNED BY

U.S. District Judge

H. DALE COOK

Date

11-16-79

By

() CLERK

() DEPUTY

U.S. Magistrate

UNITED STATES DISTRICT COURT

Northern District of Oklahoma

United States of America)

vs.)

DORRISANN BEEMAN, aka
DORRISANN SHANE)

Criminal No. 79-CR-130-C

NOV 15 1979

ORDER FOR DISMISSAL

Pursuant to Rule 48(a) of the Federal Rules of Criminal

Procedure and by leave of court endorsed hereon the United States

Attorney for the Northern District of Oklahoma

hereby dismisses the Indictment against
(indictment, information, complaint)

Dorrisann Beeman aka defendant.

Dorrisann Shane

Kenneth P. Eube
United States Attorney

Leave of court is granted for the filing of the foregoing dismissal.

W. J. L. L. L.
United States District Judge

Date: November 15, 1979

DOJ

FORM OBD-113

8-27-74

DEFENDANT

JORGE ALBERTO ORTEGA-ROJAS

DOCKET NO.

79-CR-128-C

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO-245 (5/75)

In the presence of the attorney for the government
the defendant appeared in person on this date

MONTH DAY YEAR
11 15 79

COUNSEL

☒ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☐ WITH COUNSEL

Eric Anderson, Court Appointed

(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that
there is a factual basis for the plea,

☐ NOLO CONTENDERE,

☒ NOT GUILTY

NOV 15 1979

Jack C. Silver, Clerk

U. S. DISTRICT COURT

FINDING &
JUDGMENT

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged

☒ GUILTY.

Defendant has been convicted as charged of the offense(s) of **having violated Title 18, U.S.C.,
Section 1426(b), as charged in the Indictment.**

SENTENCE
OR
PROBATION
ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that ~~the defendant be committed to the custody of the Attorney General and recommended to the U.S. Marshal for deportation.~~

**The imposition of sentence is hereby suspended and the defendant
is placed on probation for a period of Four (4) Years from this date.**

SPECIAL
CONDITIONS
OF
PROBATION

**In addition to the usual conditions of probation, the defendant
shall not again re-enter the United States illegally.**

**As long as the defendant does not violate any laws, supervision
of probation will not be necessary.**

ADDITIONAL
CONDITIONS
OF
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT
RECOMMEN-
DATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver
a certified copy of this judgment
and commitment to the U.S. Mar-
shal or other qualified officer.

CERTIFIED AS A TRUE COPY ON

THIS DATE

SIGNED BY

☒ U.S. District Judge

H. DALE COOK

Date

11-15-79

By

() CLERK

() DEPUTY

☐ U.S. Magistrate

DEFENDANT

WILLIAM D. BOONE

DOCKET NO.

79-CR-107-C

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO-245 (5/75)

COUNSEL

In the presence of the attorney for the government the defendant appeared in person on this date

MONTH 11 DAY 15 YEAR 79

WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

WITH COUNSEL

Irvine Ungerman, Retained

(Name of counsel)

PLEA

GUILTY, and the court being satisfied that there is a factual basis for the plea,

NOLO CONTENDERE,

NOT GUILTY

NOV 15 1979

Jack C. Silver, Clerk

U. S. DISTRICT COURT

FINDING & JUDGMENT

There being a finding of

NOT GUILTY. Defendant is discharged

GUILTY.

Defendant has been convicted as charged of the offense(s) of having violated Title 18, U.S.C. Sections 471 and 2, as charged in the Indictment.

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that:

The defendant is ordered to pay a fine unto the United States of America in the amount of \$2,000.00.

The imposition of sentence as to imprisonment only is suspended and the defendant is placed on probation for a period of Four (4) Years from this date.

IT IS FURTHER ORDERED that the defendant shall stand committed until the fine is paid or he is otherwise discharged by due process of law.

SPECIAL CONDITIONS OF PROBATION

IT IS FURTHER ADJUDGED that the order of commitment shall be stayed until November 20, 1979.

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

CERTIFIED AS A TRUE COPY ON

THIS DATE

SIGNED BY

U.S. District Judge

H. DALE COOK

Date 11-15-79

By

() CLERK

() DEPUTY

U.S. Magistrate

DEFENDANT

JOSE INES MONTOYA-HERNANDEZ

DOCKET NO.

79-CR-129-C

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO-245 [5/75]

COUNSEL

In the presence of the attorney for the government the defendant appeared in person on this date

MONTH 11 DAY 8 YEAR 79

WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

WITH COUNSEL

Eric Anderson, Court Appointed

(Name of counsel)

PLEA

GUILTY, and the court being satisfied that there is a factual basis for the plea,

NOLO CONTENDERE,

NOT GUILTY

NOV 8 1979

There being a finding of

NOT GUILTY. Defendant is discharged

GUILTY.

Jack C. Silver, Clerk
U. S. DISTRICT COURT

FINDING & JUDGMENT

Defendant has been convicted as charged of the offense(s) of having violated Title 18, U.S.C., Section 1426(b), as charged in the indictment.

The Court finds that the defendant was 19 years of age at the time of conviction and therefore subject to the Federal Youth Corrections Act, but that he does not need to be confined for treatment.

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that the defendant is hereby sentenced to the custody of the Attorney General and recommended, The imposition of sentence is hereby suspended and the defendant is placed on probation for a period of Two (2) Years from this date.

SPECIAL CONDITIONS OF PROBATION

In addition to the usual conditions of probation, the defendant shall be returned to Mexico and he shall not again re-enter the United States illegally.

As long as the defendant does not violate any laws, no supervision of probation will be required.

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

CERTIFIED AS A TRUE COPY ON

THIS DATE

SIGNED BY

U.S. District Judge

H. DALE COOK

Date 11-8-79

By

CLERK

DEPUTY

U.S. Magistrate

DEFENDANT

ANGEL SANTIBANEZ-ZUNIGA

DOCKET NO. 79-CR-127-C

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO-245 (5/75)

COUNSEL

In the presence of the attorney for the government the defendant appeared in person on this date

MONTH 11 DAY 8 YEAR 79

WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

WITH COUNSEL

Eric Anderson, Court Appointed

(Name of counsel)

PLEA

GUILTY, and the court being satisfied that there is a factual basis for the plea,

NOLO CONTENDERE,

NOT GUILTY

NOV 8 1979

Jack C. Silver, Clerk
U. S. DISTRICT COURT

FINDING & JUDGMENT

There being a finding of

NOT GUILTY. Defendant is discharged

GUILTY.

Defendant has been convicted as charged of the offense(s) of having violated Title 18, USC, Section 1426(b), as charged in the Indictment.

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: ~~The defendant hereby committed to the custody of the Attorney General for his authorized representative for imprisonment for a period of~~

The imposition of sentence is hereby suspended and the defendant is placed on probation for a period of Two (2) Years from this date.

SPECIAL CONDITIONS OF PROBATION

In addition to the usual conditions of probation, the defendant is to be returned to Mexico and he is not again to re-enter the United States illegally.

As long as the defendant does not violate any laws, no supervision of probation will be required.

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

CERTIFIED AS A TRUE COPY ON

THIS DATE

SIGNED BY

U.S. District Judge

H. DALE COOK

U.S. Magistrate

Date 11-8-79

By

CLERK

DEPUTY

DEFENDANT RHONDA MICHELLE PRICE

DOCKET NO. 79-CR-111-C

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO-245 (5/75)

In the presence of the attorney for the government the defendant appeared in person on this date

MONTH DAY YEAR 11 8 79

COUNSEL

WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

WITH COUNSEL Terrill Corley, Retained (Name of counsel)

PLEA

GUILTY, and the court being satisfied that there is a factual basis for the plea, NOLO CONTENDERE, NOT GUILTY

NOV 8 1979

Jack C. Silver, Clerk U. S. DISTRICT COURT

FINDING & JUDGMENT

There being a finding/verdict of NOT GUILTY. Defendant is discharged GUILTY.

Defendant has been convicted as charged of the offense(s) of having violated Title 18, U.S.C., Section 1708, as charged in the indictment.

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for incarceration.

The imposition of sentence is hereby suspended and the defendant is placed on probation for a period of Three (3) Years from this date.

SPECIAL CONDITIONS OF PROBATION

In addition to the usual conditions of probation, the defendant is ordered to make restitution in the amount of \$198.00.

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

CERTIFIED AS A TRUE COPY ON

THIS DATE

SIGNED BY

U.S. District Judge

H. DALE COOK

Date 11-8-79

By

CLERK

DEPUTY

U.S. Magistrate

United States of America vs.

United States District Court for

NORTHERN DISTRICT OF OKLAHOMA

DEFENDANT

ROSE MARIE CREAR

DOCKET NO.

79-CR-102-C

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO-245 (5/75)

COUNSEL

In the presence of the attorney for the government the defendant appeared in person on this date

MONTH

DAY

YEAR

11

8

79

WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

WITH COUNSEL

Wesley E. Johnson, Court Appointed

(Name of counsel)

PLEA

GUILTY, and the court being satisfied that there is a factual basis for the plea,

NOLO CONTENDERE,

NOT GUILTY

NOV 8 1979

Jack C. Silver, Clerk

U. S. DISTRICT COURT

FINDING & JUDGMENT

There being a finding of

NOT GUILTY. Defendant is discharged

GUILTY.

Defendant has been convicted as charged of the offense(s) of having violated Title 18, U.S.C., Sections 1708 and 495, as charged in Counts 1 and 2 of the Indictment.

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

Count 1 - Two (2) Years

Count 2 - Two (2) Years

IT IS FURTHER ORDERED that the sentence imposed in Count 2 shall run concurrently with the sentence imposed in Count 1.

SPECIAL CONDITIONS OF PROBATION

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, It is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

CERTIFIED AS A TRUE COPY ON

THIS DATE

SIGNED BY

U.S. District Judge

H. DALE COOK

Date

11-8-79

By

() CLERK

() DEPUTY

U.S. Magistrate

DEFENDANT

EDGAR OSVALDO DUARTE

DOCKET NO.

79-CR-137-C

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO-245 (5/75)

In the presence of the attorney for the government
the defendant appeared in person on this date

MONTH DAY YEAR
11 1 79

COUNSEL

WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

X WITH COUNSEL

Howard W. Sell, Court Appointed

(Name of counsel)

PLEA

X GUILTY, and the court being satisfied that
there is a factual basis for the plea,

NOLO CONTENDERE,

NOT GUILTY

FILED

11 1 1979

FINDING &
JUDGMENT

There being a finding of

NOT GUILTY. Defendant is discharged

X GUILTY.

Defendant has been convicted as charged of the offense(s) of **having violated Title 8, U.S.C.,
Section 1326, as charged in the Information.**

Jack C. Silver, Clerk
U. S. DISTRICT COURT

SENTENCE
OR
PROBATION
ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that ~~the defendant be sentenced to the custody of the Attorney General for a period of one year from this date.~~

The imposition of sentence is hereby suspended and the defendant is placed on probation for a period of One (1) Year from this date.

SPECIAL
CONDITIONS
OF
PROBATION

In addition to the usual conditions of probation, the defendant is not to re-enter the United States illegally.

ADDITIONAL
CONDITIONS
OF
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT
RECOMMEN-
DATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

CERTIFIED AS A TRUE COPY ON

THIS DATE

SIGNED BY

X U.S. District Judge

H. DALE COOK

Date 11-1-79

By

() CLERK

() DEPUTY

U.S. Magistrate

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